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BEFORE THE  
SURFACE TRANSPORTATION BOARD



ARIZONA PUBLIC SERVICE COMPANY,  
AND PACIFICORP,

Complainants,

v.

Docket No. 41185

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY,

Defendant.

**DEFENDANT'S MOTION TO COMPEL RESPONSES TO DISCOVERY REQUESTS**

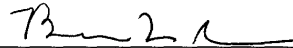
Pursuant to 49 C.F.R. § 1114.31, Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby moves for an order compelling the production of confidential coal supply agreements by Complainants Arizona Public Service Company and PacifiCorp (collectively "APS/PacifiCorp") that are relevant to the stand-alone cost ("SAC") issues likely to arise in this proceeding.

These materials are the subject of BNSF's First Requests for Production of Documents served on December 2, 2003, appended to this motion as Attachment 1. BNSF's Request for Production Nos. 2, 3(b) and 3(d) seek, among other things, the production of documents related to future coal consumption at the APS/PacifiCorp Cholla plant. In the course of collecting these materials, APS/PacifiCorp advised BNSF that it cannot produce responsive confidential coal supply agreements absent a Board Order, and that it does not oppose BNSF's motion to compel.

Coal supply agreements are relevant to SAC evidence because they permit the defendant to evaluate the reasonableness of complainant's assumptions regarding the source and volume of

coal that will be transported by the stand-alone railroad. The Board has previously ordered the production of confidential information relating to complainant's coal sources subject to the provisions of the protective orders governing materials used in a SAC case. *See, e.g., AEP Texas North Co. v. The Burlington No. and Santa Fe Ry. Co.*, STB Docket No. 41191 (Sub-No. 1), at 2 (served Dec. 4, 2003); *Carolina Power & Light Co. v. Norfolk So. Ry. Co.*, STB Docket No. 42072, at 6 (served Aug. 26, 2002); *Duke Energy Corp. v. Norfolk So. Ry. Co.* STB Docket No. 42069, and *Duke Energy Corp. v. CSX Transp., Inc.*, STB Docket No. 42070, at 11-12 (jointly served July 26, 2002). Consistent with these decisions, BNSF requests that the Board enter an order compelling APS/PacifiCorp to produce confidential coal supply agreements responsive to BNSF's Request for Production Nos. 2, 3(b) and 3(d).

Respectfully submitted,



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Attorneys for  
The Burlington Northern and Santa Fe  
Railway Company

Dated: January 15, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2004, a true and correct copy of the foregoing document was served by hand on:

C. Michael Loftus  
Christopher A. Mills  
Frank J. Pergolizzi  
Peter A. Pfohl  
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1224 Seventeenth Street, N.W.  
Washington, D.C. 20036



Brooke L. Gaede

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

ARIZONA PUBLIC SERVICE COMPANY,  
AND PACIFICORP,

Complainants,

**V.**

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

**Defendant.**

Docket No. 41185

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY'S REQUESTS FOR  
PRODUCTION OF DOCUMENTS ON REOPENING**

Pursuant to 49 C.F.R. § 1114.30, Defendant The Burlington Northern and Santa Fe Railway Company (“BNSF”) hereby submits its Requests for Production of Documents to Complainants Arizona Public Service Company (“APS”) and PacifiCorp (collectively “APS/PacifiCorp”).

Responses to BNSF's requests and copies of responsive documents should be delivered to the offices of Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036, on January 19, 2004 unless otherwise agreed by the parties. BNSF is prepared to cooperate with the Complainants to facilitate the expeditious production of documents with the minimum practicable burden.

I.

**DEFINITIONS**

The following defined terms are used herein:

1. "And," "or," and/or "each" shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each Request all responsive information or documents which otherwise might be construed as outside the scope of the Request. All use of the masculine gender shall be deemed to include the feminine.
2. "APS" means Arizona Public Service Company, its present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessors, parent and/or holding companies, subsidiaries, or any of them, and all other persons acting (or who have acted) on its behalf.
3. "Cholla" or "Destination" means Cholla coal fired electric generating plant located at Joseph City, Arizona, including its rail car unloading facilities.
4. "Coronado" means the electrical generating plant of the Salt River Agricultural Improvement and Power District, located at Coronado, Arizona.
5. "Document(s)" means all writings or visual displays of any kind, whether generated by hand or mechanical means, including, without limitation, photographs, lists, memoranda, reports, notes, letters, phone logs, contracts, drafts, workpapers, computer printouts, computer tapes, telecopies, telegrams, newsletters, notations, books, affidavits, statements (whether or not verified), speeches, summaries, opinions, studies, analyses, evaluations, statistical records, proposals, treatments, outlines, any electronic or mechanical records or representations (including physical things such as, but not limited to, computer disks), and all other materials of any tangible medium or expression, in BNSF's current or prior possession,

custody or control. A draft or non-identical copy is a separate document within the meaning of this term.

6. "PacifiCorp" means PacifiCorp, its present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessors, parent and/or holding companies, subsidiaries, or any of them, and all other persons acting (or who have acted) on its behalf.

7. "P&M" means the Pittsburgh & Midway Coal Mining Company.

8. "Related," "related to," and "relating to" mean and include making a statement discussing, describing, referring to, reflecting, explaining, analyzing, or in any way pertaining to, in whole or in part, the subject matter of the Request.

## II.

### INSTRUCTIONS

Complainants are requested to conform to the following instructions in responding to these Requests.

1. Each paragraph below shall operate and be construed independently. Unless otherwise indicated, no paragraph limits the scope of any other paragraph.

2. If the production of any responsive document is withheld under 49 C.F.R. § 1114.30(a)(1) on the basis of a claimed privilege or attorney work product, then for each document, provide the following information: its date, type (e.g., letter, meeting, notes, memo, etc.), author (note if author is an attorney), addressee(s)/recipient(s) (note if addressee(s) or recipient(s) is an attorney), general subject matter, and basis for withholding the information.

3. If the production of any requested document is withheld for claimed grounds other than privilege or attorney work product, state with specificity the basis for such withholding.

4. APS/PacifiCorp are requested to supplement their responses to these requests in the manner provided in 49 C.F.R. § 1114.29.
5. If a responsive document was, but is no longer in APS or PacifiCorp's possession, custody or control, describe what disposition was made of it.
6. Please organize the documents produced in such a manner that BNSF may readily determine which documents are being produced by APS/PacifiCorp in response to each specific Request. If no document is produced in response to any specific Request, please so indicate in the response.
7. In the event APS or PacifiCorp objects to producing any documents on grounds that APS or PacifiCorp does not maintain the information in the form or format requested by BNSF, please produce the materials in the form or format in which APS or PacifiCorp does maintain such information and any other materials from which responsive information may be derived.
8. BNSF reserves the right to file supplemental and/or follow-up Interrogatories, Document Production Requests, and other discovery, as necessary or appropriate.

### III.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

##### **Request No. 1:**

Please produce all currently effective, or prospectively effective, transportation contracts, including amendments and supplements thereto and appendices or attachments (or letters of understanding), and all common carrier pricing authorities or other documents containing common carrier rate and service terms that APS/PacifiCorp has entered into, agreed to, or provided with respect to the transportation of coal from any origin to Cholla.

**Request No. 2:**

Please produce all forecasts or projections prepared from January 1, 2000 through the present by or for APS or PacifiCorp (or in APS or PacifiCorp's possession), of future (*i.e.*, 2003 or later) traffic volumes, revenues, and/or rates for coal moving over any portion of BNSF's system for delivery to or burn at Coronado and/or Cholla.

**Request No. 3:**

Please produce all documents referring or relating to the potential shut down of the McKinley Mine prepared from January 1, 2000 through the present, including but not limited to documents showing or constituting:

- a. Estimates of the amount of economically recoverable coal reserves at the McKinley Mine;
- b. Estimates of the amount of coal to be produced at the McKinley Mine that will move to Cholla for each year 2004-2013 and/or the transportation rates for such coal;
- c. Estimates of the amount of coal to be produced at the McKinley Mine that will move to Coronado for each year 2004-2013 and/or the transportation rates for such coal;
- d. Estimates of the amount of coal to be produced at each mine origin other than the McKinley Mine that will move to Cholla for each year 2004-2013 and/or the transportation rates for such coal;
- e. Estimates of the amount of coal to be produced at each mine origin other than the McKinley Mine that will move to Coronado for each year 2004-2013 and/or the transportation rates for such coal;

- f. The transportation route(s) expected to be utilized for movements of coal from each mine origin specified in subparts (d) and (e);
- g. The impacts, if any, of the shutdown of the McKinley Mine on expected coal burns at Cholla and Coronado;
- h. The impacts of the shutdown of the McKinley Mine on expected coal transportation revenues to the BNSF on coal deliveries to Cholla and Coronado;
- i. Communications between APS/PacifiCorp and BNSF relating to the potential shutdown of the McKinley Mine, the estimated timing of such shutdown, and/or its potential impacts on coal burns and deliveries at Cholla; and
- j. Communications between APS/PacifiCorp and P&M relating to the potential shutdown of the McKinley Mine by P&M, the estimated timing of such shutdown, and its potential impacts on coal burns and deliveries from McKinley to either Cholla or Coronado or any other coal customers.

**Request No. 4:**

Please provide all documents prepared from January 1, 2000 to present (whether or not prepared by APS or PacifiCorp) relating to any contractual negotiations between APS or PacifiCorp and any party pertaining to coal transportation movements during the period 2004-2013 to Cholla, including but not limited to documents relating to any contractual negotiations for a delivered cost of coal to Cholla.

**Request No. 5:**

Please produce all inflation and/or rail cost adjustment estimates, projections, or forecasts, (whether or not prepared by APS or PacifiCorp) for each year or partial year January 1, 2000 to the present, including, but not limited to:

- a. Inflation indexes, including, but not limited to, the Rail Cost Adjustment Factor, unadjusted for productivity, and the Rail Cost Adjustment Factor, adjusted for productivity;
- b. The cost of acquiring capital; and
- c. Operating expenses and general expenses, including, but not limited to, asset, equipment and labor expense.

**Request No. 6:**

Please produce for each year or partial year from January 1, 1994 to the present, by mine origin: (a) the coal tonnages delivered by BNSF to Cholla and (b) the revenues associated with all deliveries identified in response to subpart (a).

**Request No. 7:**

Please produce documents summarizing or discussing factors that influence the quality or mix of coal to be burned at Cholla from January 1, 2000 to the present, including but not limited to (a) documents sufficient to show the quality or mix of coal that can be burned at Cholla and (b) documents describing plans to modify the Cholla plant from 2003 through 2014 to allow a different quality or mix of coal to be burned at the Cholla plant.

Respectfully submitted,



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DATED: December 2, 2003

ATTORNEYS FOR THE BURLINGTON  
NORTHERN AND SANTA FE RAILWAY  
COMPANY

**CERTIFICATE OF SERVICE**

I hereby certify that this 2nd day of December, 2003, I served a copy of The Burlington Northern and Santa Fe Railway Company's Requests for Production of Documents on Reopening by fax and U.S. Mail on designated outside counsel for APS/PacifiCorp, as follows:

C. Michael Loftus  
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